

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Miriam Lynch	Team: Squad #11	CCRB Case #: 201902236	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 12/12/2018 12:00 PM	Location of Incident: dead end of Park Lane South; 80th Street and Jamaica Avenue; near Fulton Street and Grant Avenue	Precinct: 102	18 Mo. SOL 6/12/2020	EO SOL 1/27/2021	
Date/Time CV Reported Wed, 02/13/2019 12:00 AM	CV Reported At: IG NYPD	How CV Reported: Phone	Date/Time Received at CCRB Wed, 03/13/2019 1:05 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Nicholas Bekas	04530	950063	NARCBQS
2. SGT Thomas Gagliardi	00996	930188	NARCBQS

Officer(s)	Allegation	Investigator Recommendation
A.SGT Thomas Gagliardi	Abuse: At the dead end of Park Lane South in Queens, Sergeant Thomas Gagliardi authorized the stop of the vehicle in which § 87(2)(b) was an occupant.	
B.POM Nicholas Bekas	Force: At 80th Street and Jamaica Avenue in Queens, Police Officer Nicholas Bekas struck § 87(2)(b)'s car with his vehicle.	
C.POM Nicholas Bekas	Force: At 80th Street and Jamaica Avenue in Queens, Police Officer Nicholas Bekas struck § 87(2)(b)'s car with his vehicle.	
D.SGT Thomas Gagliardi	Abuse: At 80th Street and Jamaica Avenue in Queens Sergeant Thomas Gagliardi authorized the vehicle pursuit of § 87(2)(b)	
E.POM Nicholas Bekas	Force: In the vicinity of Fulton Street and Grant Avenue in Brooklyn, Police Officer Nicholas Bekas struck § 87(2)(b)'s car with a vehicle.	

## Case Summary

On December 12, 2018, Captain Jack Morrison of Narcotics Borough Queens South filed this complaint on behalf of injured prisoner § 87(2)(b). IAB Log number 2018-48661 was generated. On February 13, 2019, § 87(2)(b) filed this complaint via phone with the New York City Department of Investigation's Office of the Inspector General for the NYPD (OIG-NYPD). Complaint number C19-0094 was generated. On March 13, 2019, the CCRB received this complaint from OIG-NYPD under this complaint number.

On December 12, 2018, at approximately 12:00 p.m. § 87(2)(b) was driving a gray 2005 Jaguar sedan near the dead end of Park Lane South in Queens when he encountered PO Nicholas Bekas and Sgt. Thomas Gagliardi, then both of Narcotics Borough Queens South. PO Bekas was operating an unmarked Toyota 4Runner. Sgt. Gagliardi decided to stop § 87(2)(b)'s vehicle (**Allegation A- Abuse of Authority-** § 87(2)(g) PO Bekas allegedly collided with § 87(2)(b)'s vehicle on Jamaica Avenue at 80<sup>th</sup> Street (**Allegation B- Force-** § 87(2)(g) § 87(2)(b) reversed his vehicle onto 80<sup>th</sup> Street, and PO Bekas collided with one of the front panels of § 87(2)(b)'s vehicle (**Allegation C- Force-** § 87(2)(g) § 87(2)(b) drove towards Brooklyn on Jamaica Avenue, and Sgt. Gagliardi authorized PO Bekas to pursue § 87(2)(b) in his vehicle (**Allegation D- Abuse of Authority-** § 87(2)(g) PO Bekas allegedly rear-ended § 87(2)(b)'s vehicle on Fulton Street near Grant Avenue (**Allegation E- Force-** § 87(2)(g) The vehicle pursuit ended when § 87(2)(b) lost control of his vehicle and collided with a utility pole at Fulton Street and Grant Avenue.

As a result of this incident, § 87(2)(b) was arrested for assault on a police officer, criminal possession of a controlled substance in the third degree, reckless endangerment in the first degree, criminal possession of a controlled substance in the fifth degree, vehicular assault in the second degree, fleeing an officer in a motor vehicle in the second degree, criminal possession of marijuana in the fourth degree, criminal possession of a controlled substance in the seventh degree, and aggravated unlicensed operation of a motor vehicle in the third degree (Board Review 01).

As a result of this incident, § 87(2)(b) sustained a right acetabular (hip socket) fracture, for § 87(2)(b) (Privileged Documents).

Many videos of this incident, from surveillance cameras in the vicinity of 80<sup>th</sup> Street and Jamaica Avenue, were provided to the CCRB after a request to IAB for their investigative case file. These videos have been excerpted in the relevant portions of the report below.

Group 54 of IAB investigated of this incident under IAB Log number 2018-48661 (Transcribed in Board Review 02). On July 9, 2019, PO Bekas received Charges and Specifications for Vehicle Pursuit-Fail to Notify Dispatch, Vehicle Pursuit- Fail to Terminate, Misleading Statement, Fail to Notify Supervisor, Other-Ramming, and Other-Vehicle Pursuit. On July 9, 2019, Sgt. Gagliardi received Charges and Specifications for Vehicle Pursuit-Fail to Terminate, Vehicle Pursuit- Fail to Notify Dispatch, Failed to Supervise, Fail to Notify Supervisor, Misleading Statement, Relevant portions of the IAB case file have been excerpted and summarized below.

## Findings and Recommendations

**Allegation (A) Abuse of Authority: At the dead end of Park Lane South in Queens, Sergeant Thomas Gagliardi Nicholas authorized the stop of the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(g) § 87(2)(b) stated at different times that the initial encounter occurred at Park Lane South and at Jamaica Avenue and 80<sup>th</sup> Street in Queens. PO Bekas and Sgt. Gagliardi stated that the initial encounter occurred at Park Lane South. It is undisputed, however, that § 87(2)(b) was driving a vehicle with darkly-tinted windows at the time.

The IAB investigative case file indicates that there was surveillance video recovered from

Park Lane South which shows both PO Bekas's vehicle and § 87(2)(b)'s vehicle near the dead end at Park Lane South, with PO Bekas's vehicle following § 87(2)(b)'s car. The enclosed video clips are extremely short, and not clearly labeled regarding their exact location (Board Review 02; Board Review 24-27, entirety of each video clip).

In his statement to the CCRB, § 87(2)(b) testified that he first encountered the police vehicle at 81<sup>st</sup> Street and Jamaica Avenue. All of the tints on the windows of his car, and a sun-strip on the front windshield blocked 95 percent of light from passing through the vehicle. He testified that at the time, he did not know that the unmarked SUV was a police vehicle.

Sgt. Gagliardi was in the police vehicle on his way back from a memorial service, on duty, when he observed § 87(2)(b) at 104<sup>th</sup> Street and Jamaica Avenue interacting with several known subjects in a long-term investigation (when asked for the names of these individuals, Sgt. Gagliardi demurred on the basis that the criminal cases of these individuals was still active). He observed several of these individuals go into § 87(2)(b)'s car briefly and then leave, which signaled a drug transaction to Sgt. Gagliardi. He also remembered that § 87(2)(b) had dark tints on his vehicle's windows. He and PO Bekas followed § 87(2)(b) in their vehicle between Atlantic Avenue and 104<sup>th</sup> Street and Jamaica Avenue and Park Lane South, using Woodhaven Boulevard.

Sgt. Gagliardi said that he authorized PO Bekas to stop § 87(2)(b) at Park Lane South near Jamaica Avenue. He did not know § 87(2)(b) but he wanted to identify him for the purposes of the long-term investigation. He activated the lights of the vehicle and PO Bekas hit the siren to get § 87(2)(b) to stop.

PO Bekas also remembered seeing § 87(2)(b) at Atlantic Avenue interacting with subjects in a long-term investigation called § 87(2)(b). "The people § 87(2)(b) was interacting with were known to be violent, but PO Bekas could not say more, due to the ongoing nature of this investigation. He did not see § 87(2)(b) committing any crime, but intended to stop him only for the New York State Vehicular Traffic Law (VTL) violation to identify him for the long-term investigation. He activated his turret lights and siren to get § 87(2)(b) to stop.

The Criminal Court Complaint prepared for this incident, sworn by PO Bekas, indicated that the officers attempted to stop § 87(2)(b) at Park Lane South after viewing excessive tints on his vehicle's windows (Board Review 05).

§ 87(2)(b), § 87(2)(g)

New York State Vehicle and Traffic Law (VTL) section 375 12(a) forbids motorists from operating a vehicle with windows treated with any substance with a light transmittance of 70 percent. New York State VTL Section 376 (a) 1 permits officers to take action on any vehicles operating in violation of VTL Section 375 (Board Reviews 06 and 07).

§ 87(2)(b), § 87(2)(g)

**Allegation (B) Force: At 80<sup>th</sup> Street and Jamaica Avenue in Queens, Police Officer Nicholas Bekas struck § 87(2)(b)'s car with his vehicle.**

It is undisputed that § 87(2)(b) and PO Bekas engaged in a head-on collision at on Jamaica Avenue at 80<sup>th</sup> Street. § 87(2)(b), § 87(2)(g)

Surveillance video from 80<sup>th</sup> Street and Jamaica Avenue from the IAB file shows § 87(2)(b)'s vehicle and PO Bekas's vehicle driving towards each other, § 87(2)(b)'s vehicle from 80<sup>th</sup> Street and PO Bekas's vehicle from Jamaica Avenue (Board Review 16, timestamps 00:00:20 to 00:00:41 in the video player; Board Review 17, timestamps 00:00:15 to 00:00:49 in the video

player). There is no view enclosed that shows the fronts of the vehicles at the time of impact.

§ 87(2)(b) stated to IAB the night of the incident that PO Bekas's vehicle collided with him at Park Lane South while § 87(2)(b) was making a U-turn. They then allegedly hit him head on at 80<sup>th</sup> Street and Jamaica Avenue, after which § 87(2)(b) drove away from them (Board Review 02).

§ 87(2)(b) said to IAB on December 12, 2018 when he was interviewed at § 87(2)(b) Hospital that the officers struck his vehicle at Park Lane South while he was making a U-turn, then hit him head-on at 80<sup>th</sup> Street and Jamaica Avenue (Board Review 02, Board Review 28). § 87(2)(b) said to OIG-NYPD that he first saw the officers at 80<sup>th</sup> Street and Jamaica Avenue, and there was nothing that identified them as police officers. They hit him head on, and then put on their lights and sirens when he drove away (Board Review 03).

§ 87(2)(b) testified to the CCRB that he first saw the officers' vehicle at 80<sup>th</sup> Street and Jamaica Avenue, as he was turning from 80<sup>th</sup> Street onto Jamaica Avenue. He swerved to avoid the officers, but they turned towards him to hit him head on. They then hit him a second time, which will be addressed below.

PO Bekas stated that after the officers tried to stop § 87(2)(b) at Park Lane South, § 87(2)(b) drove away and sideswiped PO Bekas's vehicle, disabling the police safety lights. After the encounter at Park Lane South, he lost sight of § 87(2)(b) and next saw him as § 87(2)(b)'s vehicle turned from 80<sup>th</sup> Street onto Jamaica Avenue, towards his own vehicle. PO Bekas tried to stop § 87(2)(b) by turning to block his path, but § 87(2)(b) hit him head-on when he himself stopped.

Sgt. Gagliardi also testified that § 87(2)(b) struck the vehicle as he was driving away from the officers at Park Lane South. When the officers encountered § 87(2)(b) again at 80<sup>th</sup> Street and Jamaica Avenue, he instructed PO Bekas to block § 87(2)(b)'s path when he saw him, and PO Bekas drove in front of him and stopped. At the time of the collision, the police car was completely stationary.

§ 87(2)(g), § 87(2)(e)

Automated Vehicle Location (AVL) data from the vehicle that PO Bekas was driving on the date of the incident shows that it was at Woodhaven Boulevard and Atlantic Avenue at 12:05 p.m. The vehicle then goes to Park Lane South, at 12:15 p.m., slowing to 4.52 miles per hour from 22.5 miles per hour. After the vehicle slows to 4.52 miles per hour, it accelerates to 67.5 miles per hour. At 12:18 p.m., the vehicle is recorded going at 0.18 miles per hour and 0.56 miles per hour before accelerating to 21.54 miles per hour several seconds later (Board Review 04; transcribed in Board Review 02). The AVL data available to the investigation presented measurements of speed approximately every nine to eleven seconds.

§ 87(2)(b), § 87(2)(g)

**Allegation (C) Force: At 80<sup>th</sup> Street and Jamaica Avenue in Queens, Police Officer Nicholas Bekas struck § 87(2)(b)'s car with a vehicle.**

It is undisputed that PO Bekas drove his vehicle into the front of § 87(2)(b)'s vehicle as § 87(2)(b) was reversing his vehicle from Jamaica Avenue.

Surveillance video from 80<sup>th</sup> Street and Jamaica Avenue, provided by IAB through two separate requests for their investigative case file, shows that after the head-on collision, the police SUV drives into the driver's side of § 87(2)(b)'s car. § 87(2)(b)'s car moved backwards, around

the corner, back from Jamaica Avenue onto 80<sup>th</sup> Street (Board Review 16, timestamps 00:00:20 to 00:00:41 in the video player; Board Review 17, timestamps 00:00:15 to 00:00:49 in the video player).

In his statement to IAB, § 87(2)(b) mentioned only one collision—the head-on collision—at 80<sup>th</sup> Street and Jamaica Avenue. He testified that after this collision, he drove away from the officers.

In the statement to OIG-NYPD, § 87(2)(b) also only mentioned one collision at 80<sup>th</sup> Street and Jamaica Avenue, after which he fled the scene in his vehicle.

§ 87(2)(b) described two collisions at Jamaica Avenue and 80<sup>th</sup> Street to the CCRB. The first was addressed in Allegation C. He described the second collision: the police vehicle swerved into the southbound lane of Jamaica Avenue and hit the doors of § 87(2)(b)'s car, dragging it back towards 80<sup>th</sup> Street. After this collision, § 87(2)(b)'s vehicle began to smoke from the car's intake.

PO Bekas testified that after the head-on crash at 80<sup>th</sup> Street and Jamaica Avenue, § 87(2)(b) started reversing his vehicle back onto 80<sup>th</sup> Street. PO Bekas started driving his car forward as § 87(2)(b) did this. The two cars were moving “as one,” reversing and accelerating at the same rate. § 87(2)(b) stopped reversing, and PO Bekas drove the front part of his vehicle into the front side panel of § 87(2)(b)'s car. He denied intentionally striking § 87(2)(b)'s vehicle at any point. He denied that Sgt. Gagliardi was making any attempt to assist him.

Sgt. Gagliardi stated that since § 87(2)(b) had already struck the police vehicle, then he wanted PO Bekas to try to block § 87(2)(b)'s path again. He yelled at PO Bekas to block § 87(2)(b) who was reversing his own vehicle. Instead of turning the police vehicle to counteract § 87(2)(b), PO Bekas drove the police vehicle into § 87(2)(b)'s vehicle.

Police Accident Report # § 87(2)(b) filled out for this incident does not reflect that the officers struck § 87(2)(b) with their vehicle (Board Review 08). This report was approved by Lt. Brian Donoghue of Narcotics Borough Queens South. He was not present for this incident.

Charges and Specifications were served on PO Bekas and Sgt. Gagliardi for a False Official Statement for omitting in this report that the officers struck § 87(2)(b)'s vehicle when they presented it to their supervisor. In addition, IAB substantiated allegations of vehicle ramming against PO Bekas for this incident (Board Review 02).

Per NYPD Patrol Guide Procedure 221-15, officers shall not ram their vehicles into vehicles they are attempting to stop (Board Review 09).

§ 87(2)(b), § 87(2)(g)

**Allegation (D) Abuse of Authority: At 80<sup>th</sup> Street and Jamaica Avenue in Queens Sergeant Thomas Gagliardi authorized the vehicle pursuit of § 87(2)(b).**

It is undisputed that after the second collision at 80<sup>th</sup> Street and Jamaica Avenue, § 87(2)(b) drove away from the officers on Jamaica Avenue. § 87(2)(b) drove onto the sidewalk of Jamaica Avenue, traveled approximately half of a block, and turned onto Fulton Street. In the time that this was happening, smoke was coming out of § 87(2)(b)'s vehicle from the driver's side. At Fulton Street and Grant Avenue, § 87(2)(b) lost control of his vehicle and crashed into a utility pole. This crash caused a fracture in § 87(2)(b)'s hip socket, § 87(2)(b) (Privileged Documents, transcribed in Board Review 10).

Surveillance footage from the IAB case file from 80<sup>th</sup> Street and Jamaica Avenue shows § 87(2)(b)'s car smoking and driving onto the sidewalk of Jamaica Avenue, and the officers' vehicle driving on Jamaica Avenue, in the roadway, after him (Board Review 18, timestamps 00:00:10-00:00:51 in the video file; Board Review 19, timestamps 00:00:20-00:00:30 in the video

player; Board Review 20, timestamps 00:00:20 to 00:00:40 in the video player). Footage from Grant Avenue and Fulton Street in Brooklyn shows § 87(2)(b) colliding with a utility pole, totaling his car, before getting out, running a few steps, and falling to the ground (Board Review 21, timestamps 00:00:20 to 00:00:50 in the video player; Board Review 22, timestamps 00:00:10 to 00:00:50; Board Review 23, timestamps 00:00:10 to 00:00:50 in the video player).

§ 87(2)(b) did not give any reasons why he fled by vehicle to IAB or OIG-NYPD (Board Reviews 2 and 3). § 87(2)(b) testified to the CCRB that he drove away from the officers because he was generally confused about what was going on. He lost sight of the officers until approximately three avenues before Grant Avenue on Fulton Street. The vehicle then began jerking as § 87(2)(b) lost control of the steering, and he collided with a telephone pole.

PO Bekas noted that the only reasons that he followed § 87(2)(b) in his vehicle were that § 87(2)(b) collided with his vehicle and that he did not know who § 87(2)(b) was. He was not very familiar with the area. He did not know if there was any damage done to the police vehicle which could have impeded its general functioning, though he did note that the lights and sirens were not functioning. At about 12:00 p.m., the roadway was not very crowded—none of the vehicles on the road needed to move out of PO Bekas’s way during the pursuit—and there were no weather conditions which impeded his vision.

At the time that § 87(2)(b) was driving on the sidewalk, Sgt. Gagliardi believed that he was at risk of killing someone. He directed PO Bekas to follow § 87(2)(b) to place him into custody. There were not many people on the sidewalk where § 87(2)(b) was driving. There were also not many cars on the road, a residential area, at the time. Sgt. Gagliardi was “fairly familiar” with the area, having covered the 102<sup>nd</sup> Precinct along with three other adjoining commands for a year and a half prior as a Narcotics sergeant. Sgt. Gagliardi did not put over the radio that he was engaged in a vehicle pursuit, because he could not locate his radio in the police vehicle until after the pursuit ended, and § 87(2)(b) crashed his car before Sgt. Gagliardi could report the pursuit to the dispatcher.

Sgt. Gagliardi noted that the police vehicle stalled briefly after the collision, and the safety lights and siren were no longer functioning. He did not know if there were any other reductions in capability of his vehicle. He expected § 87(2)(b)’s vehicle to cease functioning because he believed that due to the smoke rising from the car, the oilcan had been ripped off of the car. § 87(2)(b) was driving a Jaguar and the officers were in a Toyota 4Runner. Sgt. Gagliardi believed that § 87(2)(b)’s vehicle would be able to drive faster than his own under any circumstance. He said that he did not inform the dispatcher of the pursuit when it was ongoing because locating his radio and changing it from a tactical frequency to the main frequency was too laborious, and the pursuit was over by the time he was able to do these things.

Per Patrol Guide Procedure 221-15, officers must inform the radio dispatcher when there is a likelihood that a vehicle that they stop will engage in a vehicle pursuit. They must also maintain contact with the radio dispatcher for the duration of the vehicle pursuit and continually provide such information as location type of car and direction of travel, nature of the offense, occupants, and other information. Factors that govern the use of vehicle pursuits involve the nature of the offense, time of day, weather condition, location and population density, capability of Department vehicle, and familiarity with the area. The same Patrol Guide Procedure notes that unmarked vehicles should be limited in their use of vehicle pursuits (Board Review 09).

The IAB investigation substantiated vehicle pursuit allegations made against PO Bekas and Sgt. Gagliardi and failure to notify the radio dispatcher allegations against Sgt. Gagliardi (Board Review 02).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation (E) Force: In the vicinity of Fulton Street and Grant Avenue in Brooklyn, Police Officer Nicholas Bekas struck § 87(2)(b)'s car with a vehicle.**

It is undisputed that § 87(2)(b) maintained some distance in his vehicle when he first began driving away from PO Bekas and Sgt. Gagliardi, and that they caught up to him and drove directly behind him.

§ 87(2)(b) was not entirely sure where the officers caught up to him, but he believed that it was around three avenues west of Grant Avenue on Fulton Street. The police vehicle gently rear-ended his car at this location.

PO Bekas testified to reaching § 87(2)(b)'s vehicle after getting caught in traffic at a one-way street. He denied that the vehicles made contact after the collisions at 80<sup>th</sup> Street and Jamaica Avenue. He testified that he did not at any point intentionally strike § 87(2)(b)'s vehicle with his own.

Sgt. Gagliardi stated that he reached § 87(2)(b)'s vehicle at Fulton Street and Grant Avenue in Brooklyn, and not before. He denied that the police vehicle rear-ended § 87(2)(b)'s vehicle at any point.

A photograph of the rear bumper from the IAB case file showed a small dent to the rear bumper of § 87(2)(b)'s vehicle, high up on the bumper, near the license plate (Board Review 11). The IAB file did not include any video footage of PO Bekas's vehicle colliding with § 87(2)(b)'s vehicle (Board Review 02).

§ 87(2)(b), § 87(2)(g)

**Civilian and Officer CCRB Histories**

- § 87(2)(b)
- PO Bekas has been a member of service for eight years. Four CCRB complaints, with 13 previous allegations, have been filed against him. None has been substantiated.
  - § 87(2)(g)
  - Sgt. Gagliardi has been a member of service for 17 years. 14 complaints and 37 allegations have been filed against him.

Case 201410170 involved substantiated entry and property damage allegations. Charges were recommended and Sgt. Gagliardi was found guilty at trial. He forfeited 10 vacation days.

- Case 201500442 involved substantiated allegations of a search of person, stop, and threat of summons, for each of which the Board recommended Command Discipline – B. The NYPD ultimately levied Command Discipline – B on Sgt. Gagliardi for each allegation

○ § 87(2)(g)

### **Mediation, Civil and Criminal Histories**

- This case was not suitable for mediation due to the arrest and injury in this case.
- According to the Office of the New York City Comptroller, as of June 4, 2019, there was no Notice of Claim filed in regards to this case (Board Review 13). On April 27, 2020, the Office of the New York City Comptroller confirmed that there was no Notice of Claim filed in regards to this case (Board Review 14).

• § 87(2)(b)

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Squad No.: 11

Investigator: Miriam Lynch SI Miriam Lynch 04/28/2020  
Signature Print Title & Name Date

Squad Leader: Edwin Pena IM Edwin Pena 04/28/20  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date